

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA

v.

MATTHEW RICHARD GRAY
Defendant.

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CRIMINAL NO. 19-CR-474

PLEA AGREEMENT

The United States of America, by and through Ryan K. Patrick, United States Attorney for the Southern District of Texas, along with the undersigned Assistant United States Attorneys, and the defendant, **MATTHEW RICHARD GRAY** (“Defendant”), and Defendant’s counsel, pursuant to Rule 11(c)(1)(A) of the Federal Rules of Criminal Procedure, state that they have entered into an agreement, the terms and conditions of which are as follows:

Defendant’s Agreement

1. Defendant agrees to plead guilty to Count One of the Criminal Information. Count One charges the Defendant with Computer Fraud in violation of Title 18, United States Code, Sections 1030(a)(2) and 1030(c)(2)(B)(ii) (accessing a protected computer to obtain information in furtherance of a criminal or tortious act). Defendant, by entering this plea, agrees that he is waiving any right to have the facts that the law makes essential to the punishment either charged in the information, or proved to a jury or proven beyond a reasonable doubt. Additionally, the defendant agrees to surrender all medical-related licenses and certificates, including but not limited to a Certified Emergency Medical Technician – Paramedic license number 134343, and pay restitution to the National Aeronautics and Space Administration (NASA) in the amount of \$6,250.00.

Punishment Range

2. The **statutory** maximum penalty for violation of Title 18, United States Code, Sections 1030(a)(2) and 1030(c)(2)(B)(ii), is imprisonment of not more than five years, and fine of not more than \$250,000.00. Additionally, Defendant may receive a term of supervised release after imprisonment of three years. Defendant acknowledges and understands that if he should violate the conditions of any period of supervised release which may be imposed as part of his sentence, then Defendant may be imprisoned for up to 3 years, without credit for time already served on the term of supervised release prior to such violation. Defendant understands that he cannot have the imposition or execution of the sentence suspended, nor is he eligible for parole.

Mandatory Special Assessment

3. Pursuant to Title 18, United States Code, section 3013(a)(2)(A), immediately after sentencing, Defendant will pay to the Clerk of the United States District Court a special assessment in the amount of one hundred dollars (\$100.00) per count of conviction. The payment will be by cashier's check or money order, payable to the Clerk of the United States District Court, c/o District Clerk's Office, P.O. Box 61010, Houston, Texas 77208, Attention: Finance.

Immigration Consequences

4. Defendant recognizes that pleading guilty may have consequences with respect to his/her immigration status. Defendant understands that if he/she is not a citizen of the United States, by pleading guilty he/she may be removed from the United States, denied citizenship, and denied admission to the United States in the future. Defendant understands that if he/she is a naturalized United States citizen, pleading guilty may result in immigration consequences, such as denaturalization and potential deportation or removal from the United States. Defendant's attorney

has advised Defendant of the potential immigration consequences resulting from Defendant's plea of guilty, and Defendant affirms that he/she wants to plead guilty regardless of any immigration consequences that may result from the guilty plea and conviction.

Waiver of Appeal and Collateral Review

5. Defendant is aware that Title 28, United States Code, section 1291, and Title 18, United States Code, section 3742, afford a defendant the right to appeal the conviction and sentence imposed. Defendant is also aware that Title 28, United States Code, section 2255, affords the right to contest or "collaterally attack" a conviction or sentence after the judgment of conviction and sentence has become final. Defendant knowingly and voluntarily waives the right to appeal or "collaterally attack" the conviction and sentence, except that Defendant does not waive the right to raise a claim of ineffective assistance of counsel on direct appeal, if otherwise permitted, or on collateral review in a motion under Title 28, United States Code, section 2255. Defendant's knowing and voluntary waiver of the right to appeal or collaterally attack the conviction and sentence includes waiving the right to raise on appeal or on collateral review any argument that (1) the statute(s) to which the defendant is pleading guilty is unconstitutional and (2) the admitted conduct does not fall within the scope of the statute(s). In the event Defendant files a notice of appeal following the imposition of the sentence or later collaterally attacks his conviction or sentence, the United States will assert its rights under this agreement and seek specific performance of these waivers.

6. In agreeing to these waivers, Defendant is aware that a sentence has not yet been determined by the Court. Defendant is also aware that any estimate of a possible sentencing range under the sentencing guidelines that he/she may have received from his/her counsel, or the United

States or the Probation Office, is a prediction and not a promise, did not induce his/her guilty plea, and is not binding on the United States, the Probation Office or the Court. The United States does not make any promise or representation concerning what sentence the defendant will receive. Defendant further understands and agrees that the United States Sentencing Guidelines are “effectively advisory” to the Court. *See United States v. Booker*, 543 U.S. 220 (2005). Accordingly, Defendant understands that, although the Court must consult the Sentencing Guidelines and must take them into account when sentencing Defendant, the Court is not bound to follow the Sentencing Guidelines nor sentence Defendant within the calculated guideline range.

7. Defendant understands and agrees that each and all waivers contained in the Agreement are made in exchange for the concessions made by the United States in this plea agreement.

The United States' Agreements

8. The United States agrees to each of the following:

- (a) If the defendant agrees to waive indictment, plead guilty to the criminal information as charged, and waive his right to appeal his conviction and sentence, directly or collaterally, the United States Agrees;
- (b) If recommended by the United States Probation Office, the United States agrees to recommend that defendant receive a 2 level downward adjustment pursuant to U.S.S.G. Section 3E1.1(a), for acceptance of responsibility as contemplated by the Sentencing Guidelines;
- (c) If the Court determines that the Defendant qualifies for an adjustment under section 3E1.1(a) of the United States Sentencing Guidelines, and the offense level prior to operation of section 3E1.1(a) is 16 or greater, the United States will move under section 3E1.1(b) for an additional one-level reduction because Defendant timely notified authorities of his or her intent to plead guilty, thereby permitting the United States to avoid preparing for trial and permitting the United States and the Court to allocate their resources more efficiently;

Agreement Binding - Southern District of Texas Only

9. The United States Attorney's Office for the Southern District of Texas agrees that it will not further criminally prosecute Defendant in the Southern District of Texas for offenses arising from conduct charged in the indictment. This plea agreement binds only the United States Attorney's Office for the Southern District of Texas and Defendant. It does not bind any other United States Attorney's Office. The United States Attorney's Office for the Southern District of Texas will bring this plea agreement and the full extent of Defendant's cooperation to the attention of other prosecuting offices, if requested.

United States' Non-Waiver of Appeal

10. The United States reserves the right to carry out its responsibilities under guidelines sentencing. Specifically, the United States reserves the right:

- (a) to bring its version of the facts of this case, including its evidence file and any investigative files, to the attention of the Probation Office in connection with that office's preparation of a presentence report;
- (b) to set forth or dispute sentencing factors or facts material to sentencing;
- (c) to seek resolution of such factors or facts in conference with Defendant's counsel and the Probation Office;
- (d) to file a pleading relating to these issues, in accordance with section 6A1.2 of the United States Sentencing Guidelines and Title 18, United States Code, section 3553(a); and
- (e) to appeal the sentence imposed or the manner in which it was determined.

Sentence Determination

11. Defendant is aware that the sentence will be imposed after consideration of the United States Sentencing Guidelines and Policy Statements, which are only advisory, as well as the

provisions of Title 18, United States Code, section 3553(a). Defendant nonetheless acknowledges and agrees that the Court has authority to impose any sentence up to and including the statutory maximum set for the offense(s) to which Defendant pleads guilty, and that the sentence to be imposed is within the sole discretion of the sentencing judge after the Court has consulted the applicable Sentencing Guidelines. Defendant understands and agrees that the parties' positions regarding the application of the Sentencing Guidelines do not bind the Court and that the sentence imposed is within the discretion of the sentencing judge. If the Court should impose any sentence up to the maximum established by statute, or should the Court order any or all of the sentences imposed to run consecutively, Defendant cannot, for that reason alone, withdraw a guilty plea, and will remain bound to fulfill all of the obligations under this plea agreement.

Rights at Trial

12. Defendant understands that by entering into this agreement, he/she surrenders certain rights as provided in this plea agreement. Defendant understands that the rights of a defendant include the following:

- (a) If the Defendant persisted in a plea of not guilty to the charges, defendant would have the right to a speedy jury trial with the assistance of counsel. The trial may be conducted by a judge sitting without a jury if Defendant, the United States, and the court all agree.
- (b) At a trial, the United States would be required to present witnesses and other evidence against Defendant. Defendant would have the opportunity to confront those witnesses and his/her attorney would be allowed to cross-examine them. In turn, Defendant could, but would not be required to, present witnesses and other evidence on his/her own behalf. If the witnesses for Defendant would not appear voluntarily, he/she could require their attendance through the subpoena power of the court; and
- (c) At a trial, Defendant could rely on a privilege against self-incrimination and decline to testify, and no inference of guilt could be drawn from such refusal to

testify. However, if Defendant desired to do so, he/she could testify on his/her own behalf.

Factual Basis for Guilty Plea

13. The Defendant, Matthew Richard Gray, is pleading guilty because he is in fact guilty of Breach of Computer Security, in violation of Title 18, United States Code, Sections 1030(a)(2) and 1030(c)(2)(B)(ii) (accessing a protected computer to obtain information in furtherance of a criminal or tortious act). If this case were to proceed to trial, the United States could prove each element of the offense beyond a reasonable doubt. The following facts, and additional information, would be offered to establish Defendant's guilt:

14. From on or about July 12, 2017, and continuing until July 12, 2018, within the Houston Division of the Southern District of Texas, the defendant Matthew Gray (GRAY) was employed as a paramedic subcontractor (KBRWyle) at the NASA Johnson Space Center – HOUSTON medical clinic.

15. Pursuant to his employment, GRAY had authority to access individually identifiable health information, but only as necessary to provide actual medical services to patients, or as otherwise authorized by a patient or under the law. Accessing individually identifiable health information for any other reason would exceed his authority to access the computer network and medical records.

16. In approximately July of 2018, GRAY's co-workers reported that GRAY was violating privacy rules and regulations by accessing patient medical records without a legitimate purpose related to GRAY's employment.

17. A forensic review of GRAY's computer network systems activity demonstrated that from about July 12, 2017, and continuing until July 12, 2018, GRAY had accessed the

NASA computer network and viewed multiple patient charts belonging to individuals who were not present in the clinic for treatment. GRAY also reviewed patient medical records typically not viewed by paramedics within their legitimate scope of their employment.

18. Specifically, the forensic review showed that GRAY accessed medical charts stored on NASA computers belonging to clinic co-workers, and other NASA clinic patients. The medical charts contained individually identifiable personal identification and health information. GRAY's access of the medical charts was not in furtherance of providing medical services, or authorized by the patients.

19. Some of GRAY's co-workers received health care from the NASA clinic. A co-worker who received treatment at the NASA clinic told investigators that GRAY informed her that he had looked at her personal "charts" and GRAY sent her multiple emails and made multiple telephonic communications that she found annoying, embarrassing and offensive.

20. GRAY's supervisors indicated that he received regular training outlining patient privacy laws and computer policies. Training emphasized that it was unlawful and a privacy violation to access a patient's medical records without a legitimate purpose. GRAY recently completed the Clear Lake Emergency Medical Corps Privacy Act training course.

21. In a non-custodial statement to law enforcement agents, GRAY stated that he did access the NASA computer network and look at files belonging to approximately two dozen people. GRAY acknowledged that he had no legitimate reason to view the medical charts. GRAY indicated that when a younger female would enter the clinic, he would find out her name and look up her medical files on the computer network for reasons unrelated to his employment or providing healthcare. GRAY said that he would also attempt to take her initial vital signs.

GRAY stated that he also accessed the medical records of female co-workers, and once informed a co-worked that he looked at her medical charts. GRAY indicated that he emailed and placed phone calls to this co-worker, and sent "SKYPE" messages to another co-worker. GRAY acknowledged that he had received privacy and computer training and that he knew that medical records are protected information.

Breach of Plea Agreement

22. If Defendant should fail in any way to fulfill completely all of the obligations under this plea agreement, the United States will be released from its obligations under the plea agreement, and Defendant's plea and sentence will stand. If at any time Defendant retains, conceals, or disposes of assets in violation of this plea agreement, or if Defendant knowingly withholds evidence or is otherwise not completely truthful with the United States, then the United States may move the Court to set aside the guilty plea and reinstate prosecution. Any information and documents that have been disclosed by Defendant, whether prior to or subsequent to this plea agreement, and all leads derived therefrom, will be used against defendant in any prosecution.

Restitution, Forfeiture, and Fines – Generally

23. This Plea Agreement is being entered into by the United States on the basis of Defendant's express representation that he/she will make a full and complete disclosure of all assets over which he/she exercises direct or indirect control, or in which he/she has any financial interest. Defendant agrees not to dispose of any assets or take any action that would effect a transfer of property in which he/she has an interest, unless Defendant obtains the prior written permission of the United States.

24. Defendant agrees to make complete financial disclosure by truthfully executing a sworn financial statement (Form OBD-500 or similar form) within 14 days of signing this plea agreement. Defendant agrees to authorize the release of all financial information requested by the United States, including, but not limited to, executing authorization forms permitting the United States to obtain tax information, bank account records, credit histories, and social security information. Defendant agrees to discuss and answer any questions by the United States relating to Defendant's complete financial disclosure.

25. Defendant agrees to take all steps necessary to pass clear title to forfeitable assets to the United States and to assist fully in the collection of restitution and fines, including, but not limited to, surrendering title, executing a warranty deed, signing a consent decree, stipulating to facts regarding the transfer of title and the basis for the forfeiture, and signing any other documents necessary to effectuate such transfer. Defendant also agrees to direct any banks which have custody of his/her assets to deliver all funds and records of such assets to the United States.

26. Defendant understands that forfeiture, restitution, and fines are separate components of sentencing and are separate obligations.

Restitution

27. Defendant agrees to pay full restitution to the victim(s) regardless of the count(s) of conviction. Defendant understands and agrees that the Court will determine the amount of restitution to fully compensate the victim(s). Defendant agrees that restitution imposed by the Court will be due and payable immediately and that Defendant will not attempt to avoid or delay payment. Subject to the provisions above, Defendant waives the right to challenge in any manner, including by direct appeal or in a collateral proceeding, the restitution order imposed by the Court.

Forfeiture

28. Defendant stipulates and agrees that the property listed in the Indictment's Notice of Forfeiture (and in any supplemental Notices) is subject to forfeiture, and Defendant agrees to the forfeiture of that property.

29. Defendant agrees to waive any and all interest in any asset which is the subject of a related administrative or judicial forfeiture proceeding, whether criminal or civil, federal or state.

30. Defendant consents to the order of forfeiture becoming final as to Defendant immediately following this guilty plea, pursuant to Federal Rule of Criminal Procedure 32.2(b)(4)(A).

31. Subject to the provisions above, Defendant waives the right to challenge the forfeiture of property in any manner, including by direct appeal or in a collateral proceeding.

Fines

32. Defendant understands that under the Sentencing Guidelines the Court is permitted to order Defendant to pay a fine that is sufficient to reimburse the government for the costs of any imprisonment or term of supervised release, if any. Defendant agrees that any fine imposed by the Court will be due and payable immediately, and Defendant will not attempt to avoid or delay payment. Subject to the provisions above, Defendant waives the right to challenge the fine in any manner, including by direct appeal or in a collateral proceeding.

Complete Agreement

33. This written plea agreement, consisting of 14 pages, including the attached addendum of Defendant and his/her attorney, constitutes the complete plea agreement between the United States, Defendant, and Defendant's counsel. No promises or representations whatsoever have been

made by the United States except as set forth in writing in this plea agreement. Defendant acknowledges that no threats have been made against him/her and that he is pleading guilty freely and voluntarily because he/she is guilty.

34. Any modification of this plea agreement must be in writing and signed by all parties.

Filed at Houston, Texas, on July 23, 2019.

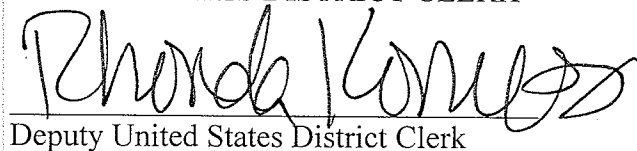


Matthew R. Gray
Defendant

Subscribed and sworn to before me on July July 23, 2019.

DAVID J. BRADLEY, Clerk
UNITED STATES DISTRICT CLERK

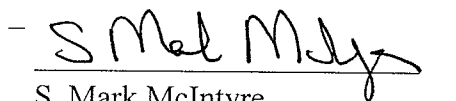
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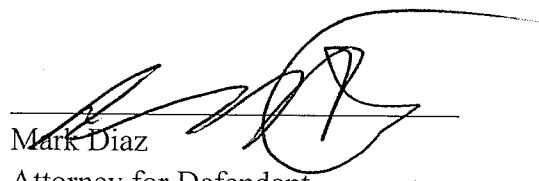

Deputy United States District Clerk

APPROVED:

Ryan K. Patrick
United States Attorney

By:

- 
S. Mark McIntyre
Assistant United States Attorney
Southern District of Texas


Mark Diaz
Attorney for Defendant

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
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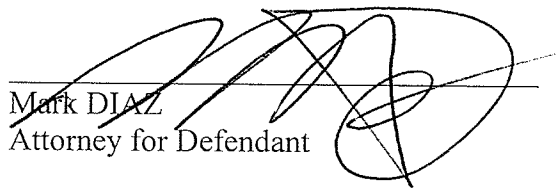
MATTHEW RICHARD GRAY
Defendant.

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CRIMINAL NO. 19-CR-474

PLEA AGREEMENT -- ADDENDUM

I have fully explained to Mr. Gray his rights with respect to the pending indictment. I have reviewed the provisions of the United States Sentencing Commission's Guidelines Manual and Policy Statements and I have fully and carefully explained to Defendant the provisions of those Guidelines which may apply in this case. I have also explained to Defendant that the Sentencing Guidelines are only advisory and the court may sentence Defendant up to the maximum allowed by statute per count of conviction. Further, I have carefully reviewed every part of this plea agreement with Defendant. To my knowledge, Defendant's decision to enter into this agreement is an informed and voluntary one.


Mark DIAZ
Attorney for Defendant

7-23-2019
Date

I, Matthew GRAY, have consulted with my attorney, Mark DIAZ, and fully understand all of my rights with respect to the indictment pending against me. My attorney has fully explained all of my rights, and I understand all of my rights with respect to the provisions of the United States Sentencing Commission's Guidelines Manual which may apply in my case. I have read and carefully reviewed every part of this plea agreement with my attorney. I understand this agreement and I voluntarily agree to its terms.



Matthew R. Gray
Defendant

7-23-2019
Date